

## UNIT PRICE CONTRACT IN CONSTRUCTION WORK

By:

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### ABSTRACT

According to Presidential Regulation No. 54 of 2010 article 50 paragraph (3) there are 5 (five) contract of procurement goods and services based on payment namely lump sum contract, unit price contract, the combination of lump sum and unit price contract, percentage contract and turnkey contract. Of those five contract types, lump sum and unit price contracts are the most common contract applied in construction work; but other types are also possible to be applied. Government Regulation No. 29 of 2000 article 21 paragraph (2) states “Construction work contract of unit price payment as stated in article 20 paragraph (3) part a number 2 is a contract on services for each completed unit of work within the time given with fixed price for each unit based on volume of work done by service Supplier”. However, there are many service Suppliers in Department of Public Works that do not fully understand about unit price contract in construction work. Thus, the objective of this study is to find out the important considerations in applying unit price contract in work construction.

**Keywords:** *Unit Price Contract*

## A. INTRODUCTION

Law of the Republic of Indonesia No. 18 of 1999 on Construction Service, article 1 paragraph (2) states that “construction works is the whole or part of a series of planning design and/or implementation as well as supervision activities including architectural, civil, mechanical, electrical and their respective environmental arrangement along with the accessories, for the realization of a building or another physical structure”. According to Presidential Regulation No. 54 of 2010 on Procurement of Goods and Services, article 1 paragraph (15), construction works is any works related to construction building or any other physical structure.

In general, construction agreement or also known as contract is a document made between parties that agree to bind themselves on certain agreements of obligations and rights so all the legal concerns of detail works and relation could be explained firmly to avoid any disagreement or dispute in the future.

Construction contract is the whole legal document between service user and service Supplier in construction work. Service user has an obligation to pay

incentives to service Supplier for his achievement<sup>1</sup>.

A contract should be arranged and observed since it contains legal issues that will influence and determine the performance of the contract in the future<sup>2</sup>. Contract administration is important to guarantee every party could commit his obligation in accordance to the agreement.

Construction service contract is a standard agreement which was designed and arranged carefully by one party (service user) and hereinafter sign in the contract with contract Supplier. The same happens in Department of Public Works of Bengkulu city where this study taken place, this covers the main contract and other supporting documents which cannot be separated as a whole such as contract attachment, contract of specific and general conditions, work design, technique specification, price quantity list and etc.

The awareness of law understanding caused by law issues is not the new phenomena in this era, it is a

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<sup>1</sup> Abdulkadir Muhammad, 2010, *Hukum Perusahaan Indonesia*, Bandung: PT. Citra Aditya Bakti, p. 96

<sup>2</sup> Davin Pradipta et all., “ *Penyelesaian Sengketa Konstruksi*”, <http://www.academia.edu/>. Retrieved on January 14, 2015 at 13.15 WIB.

common thing happens in the developing country or in the country with low awareness of law. If the opposite thing happens, it is expected that the legal effort done by one party or individual including contract or agreement could minimize the legal issues. Thus, the role of contract is as a mean or instrument to protect both parties' interest and this will be useful for both parties to assure the guaranteed interest<sup>3</sup>.

Based on the issues above the effort to increase the law awareness on construction service users in Department of Public Works of Bengkulu city is important. Thus, this study is proposed to give an understanding regarding the types of contract on construction work particularly unit price contract.

## B. RESEARCH METHODOLOGY

This is a Law normative research or law literature research or doctrinal law research. This is due to the research was done through library data consisting of primary law data supporting by secondary law data<sup>4</sup>.

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<sup>3</sup> F.x Suhardana, 2012, *Contract Drafting Kerangka Dasar dan Teknin Penyusunan Kontrak*. Yogyakarta: Universitas Atma Jaya Yogyakarta, p. 3

<sup>4</sup>Jurnal Ilmiah Ilmu Hukum Bengkoelen Justice Vol 6 No. 1, 2016. Bengkulu: Program Study Pascasarjana Ilmu Hukum UNIB, p. 115

## C. RESEARCH RESULT AND DISCUSSION

### 1. Construction Services Agreement

The history of the development of modern construction in Indonesia was begun since the proclamation of independence until today. The level of development of construction services depends heavily on the development launched by the government, especially those related to infrastructure projects undertaken to meet the public need for the facility in the public interest. Construction world developed better, when the government started a project of *prostisius* old order to align Indonesia with other countries in the world.

Civil Code regulates the form of construction services agreement in the provision of chartering agreements. Definition of chartering agreements by F.X. Djumialdji, as cited in Article 1601 b of the Civil Code, is an agreement by which one party (the contractor), bind himself to hold a job for the other party, (those who sell wholesale), to receive a specified price. The first party is called a party of contracting or principal, (*Aanbesteder, Bouwheer*, Head of Office, Work units, Project Leader). The second

party is called the contractor / vendor / contractor (*annemer*).<sup>5</sup>

According to Subekti, contract of work (*aanneming van werk*) is an agreement in which one party undertakes to the other party purposes, perform a specific job with the payment of wages which is also determined.<sup>6</sup>

With the chartering agreement there is always bound the parties in the agreement works, but there are other parties that are not directly tied to the chartering agreement. Both parties are bound, and which are not directly tied to the chartering agreement called participants of chartering agreement. The participants in the chartering agreement are:<sup>7</sup>

1. Principal (assignor).
2. Contractor (partners).
3. Planner (architect).
4. Supervisors (directors).

Principal parties (assignor) in construction services are generally held by the government. Government is the organ or agency in charge of government of a country where the whole of the

positions in a country has the duty and authority of state politics and government. What is the duty of the government is run by the state and are the responsibility rather than governance tools.<sup>8</sup>

Judging from the object, building chartering agreement is similar to other agreements which are labor agreements and doing services agreement, which is same as one mentioned that the party agrees to carry out the work of others with certain payments. The difference from one another is that the employment agreement has official or power relations between workers and employers. On the building chartering and doing services agreement does not merit such relationship, but performing work duties independently.<sup>9</sup>

According to the way of work chartering agreement, it can be divided into:<sup>10</sup>

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<sup>8</sup>Darda Syahrizal, *Hukum Administrasi Negara dan Pengadilan Tata Usaha Negara*, Pustaka Yustisia, Jakarta, 2012, page. 27.

<sup>9</sup>Sri Soedewi Masjchun Sofwan. *Hukum Bangunan, Perjanjian Pemborongan Bangunan*, Liberty Yogyakarta. 1982. Page. 52

<sup>10</sup>Peraturan Presiden Republik Indonesia Nomor 54 Tahun 2010 Tentang *Pengadaan Barang/Jasa Pemerintah*

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<sup>5</sup>FX. Djumialdji, *Perjanjian Pemborongan*, Rineka Cipta, Jakarta, 1995, page. 3.

<sup>6</sup>Subekti, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, 2001, page. 174.

<sup>7</sup>F.X. Djumialdji, *op.cit.*, hlm. 7.

- a. Work chartering agreement is obtained as a result of the tender on the basis of submitted bids
- b. Work chartering agreement is on the basis of appointment
- c. Work chartering agreement is obtained as a result of negotiations between the assignor with the contractor.

Under Article 1, item 6 of Law No. 18 of 1999 on Construction Services stated that:

The construction work contract is the entire document that governs the legal relationship between service users and service Suppliers in the implementation of construction work.

Basically, the construction work contract shall be made separately according to stages in the construction work, which consists of the construction work contract for work planning, work execution and supervision work.

The performance of construction work includes the planning and the implementation stages as well as its oversight of each stage which are implemented through activities of the preparation, execution and termination. A construction work shall comply with the

requirements of security, safety and workplace safety, labor protection as well as the local environment so as to ensure orderly implementation of construction work.

Implementing the construction work must meet the requirements of technical aspects, employment and the environment governance and the need to meet the obligations required in ensuring the order performance of the construction work.<sup>11</sup> The stages of construction work are as follows:

- a. Planning Phase

The scope of the planning phase of construction work includes pre-feasibility study, feasibility studies, general and techniques planning. Good planning construction work, in high, medium and small risk, must be supported by the activities of the planning stages. Service Suppliers are required to submit the results of work that includes the results of phase of work, the results of the first delivery, and the results of final delivery of appropriate charges, the right quality and on time. The

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<http://duniajasakonstruksi.blogspot.com/2011/09/penyelenggaraan-pekerjaan-konstruksi.html> retrieved on June 1<sup>st</sup> 2016, at 14.05

service user is obliged to make payments on the delivery of the service Supplier work in the right amount and on time.<sup>12</sup>

b. Supervision and its Implementation Phase

The scope of the implementation phase as well as supervision of construction work includes the physical implementation, monitoring, testing and delivering of the work. Implementation of construction work performed by the technical planning activities is conducted through the preparation, execution and termination. Implementation as well as supervision of the construction work should be supported by the availability of the field, documents, facilities, equipments and construction labors and materials / components of the building, tailored to the activities stage of implementation and supervision. For certain construction work, it shall be tested and approved by the relevant

authority in accordance with the applicable legislation.<sup>13</sup>

Under Article 23 Paragraph (6) the Government Regulation Number 29/2000, construction work contracts are distinguished by:

- a. Form of reward, which consists of a *lump sum*, unit price, additional costs for recompense, combination of *lump sum* and unit price, or an alliance;
- b. The period of execution of the construction work, which consists of a singular year, or plural years;
- c. Payment method for the work results, i.e. appropriate with the job progress or regular intervals.

As set forth in Article 2 of Law No. 18 of 1999 about Construction Services mentioned that:

The setting for construction service should be based on the principle of honesty and fairness, benefit, harmony, balance, independence, openness, partnership, security and safety for the sake of the community, nation, and state.

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<sup>12</sup>Article 25 and 27 of Law Number 29 Year of 2000 about The Implementation of Construction Work

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<sup>13</sup>Article 28 and 27 of Law Number 29 Year of 2000 about The Implementation of Construction Work

A construction work contract at least should include:<sup>14</sup>

- a. the parties, which contain explicitly the identity of the parties;
- b. job formulation, which contains a clear and detailed description of the scope of work, the value of work, and time limitation for the implementation;
- c. coverage and/or maintenance period, which contain about a period of coverage and/or maintenance which are the responsibility of the service Supplier;
- d. experts, which contain a provision about the number, qualification and classification of experts to carry out the construction work.
- e. rights and obligations, which contain the rights of service user to obtain the results of construction work as well as its obligations to fulfill the agreed provisions and the rights of the service Supplier to obtain information and recompense as well as its obligations in carrying out the construction work.
- f. payment methods, which contain provisions concerning the service user's obligation to make a payment of a construction work;
- g. injury promises, which contain provisions on liability in case one of the parties did not implement the agreed obligations;
- h. dispute settlement, which contains a provision on procedures of dispute settlement due to the disagreement;
- i. termination of construction work contract, which contains provisions on the termination of construction arising from non-compliance obligation of one party;
- j. condition of force (*force majeure*), which contains a provision about the incident which occurred outside of the willingness and ability of the parties, which cause harm to either party.
- k. building failure, which contains provisions concerning the obligations of service Suppliers and /or service users on building failure;
- l. workers protection, containing provisions concerning the obligations of the parties in the implementation of occupational safety and health as well as social security;
- m. environmental aspect, includes the obligation of the parties to comply with environmental requirements.

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<sup>14</sup> Article 22 of Law No. 18 of 1999 on Construction Service

Juridical principles regarding a chartering contract contained in the Civil Code are as follows:<sup>15</sup>

1. The principle of the responsibility of the parties to the errors and the supply of building materials.
2. The principle of firmness responsibility of the contractor if a building is destroyed due to defects in the construction or due to the soil factor.
3. The principle of the prohibition of changes in the contract price.
4. The principle of freedom of contract termination unilaterally by the *bouwheer*.
5. Principle of the contract attached to the contractor.
6. The Principle of *Vicarious Liability*.
7. The principle of contractual relations inconsistency.
8. The principle of the right of retention.

## 2. Type of Construction Service Contracts

According to the Presidential Decree number 54 of 2010 article 50 paragraph (3) there are five (5) types of contract procurement of goods / services

based on the method of payment, which are *lump-sum* contract, unit price contract, combination of *lump sum* and unit price contract, percentages and *turn-key* contracts. Of the five types of contracts, the most often used in the implementation of construction services were contract *lump-sum* and unit price contracts, although it is possible to use other types of contract.

When viewed from the division of responsibilities between the owner and the contractor, which is reflected in the way of payment, the type of contract can be divided into two groups, namely: a fixed price contract (*Lump Sum* or Fixed Price) and un-fixed price contract (Cost Plus or *Reimbursable*). Both have a variety of variations.<sup>16</sup> Aspect of cost calculation of construction contract work is based on the calculation of the cost/price contract that will be included in the contract. There are two forms of construction contracts regularly used, namely *Fixed Lump Sum Price* and *Unit Price* so that the contracts are often called the Fixed Price Contract and Unit Price Contract.<sup>17</sup>

<sup>15</sup> Munir Fuad, *Kontrak Pemborongan Mega Proyek*, PT. Citra Aditya Bakti, Bandung, 1998, page 26

<sup>16</sup> Imam Soeharto, 2001, *Manajemen Proyek*, Jilid 2, Erlangga, Semarang, page 4

<sup>17</sup> Nazarkhan Yasin, 2006, *Mengenal Kontrak Konstruksi di Indonesia*, Jakarta: Gramedia, pg 7



Unit price contract is a contract in which the volume of work specified in the contract is an estimate only and will be measured again to determine the volume of work actually carried out.<sup>18</sup>

In Government Regulation No. 29 of 2000 Article 21, paragraph 2 it is explained that:

"The construction work contract with the reward of Unit Price as referred to in Article 20 paragraph (3) letter a number 2 is a service contract for completion of the entire work within a certain period based on fixed and stable unit prices for every job based on the result of the joint survey on job volume that have been implemented by Service Supplier".

Furthermore, in the explanation it is mentioned that work with the unit price reward, in the case of rectification calculation of the offer price details due to an arithmetic error, the total offering price may change, but the unit price must not be altered. Arithmetic correction should only be done on a multiplication between the volumes with the unit price. All risks due to changes because of the arithmetic correction become the sole

responsibility of the Service Supplier. Determination of the winner of the auction should be based on the corrected offered price. Furthermore, the corrected offered price becomes the contract price (the value of the work). Unit Price also adheres to the principle of *lump sum*.

*Lump Sum* contract is a contract for Procurement of Goods/Services upon completion of the entire work within a certain time limit as stipulated in the contract, with the following conditions:

- a. the price is fixed and stable and no price adjustment possible;
- b. all the risks are fully covered by the Supplier of Goods/Services;
- c. the payments are based on the stage of product/output produced in accordance with the contents of the Contract;
- d. the nature of work is oriented to the output (*output based*);
- e. the total offering price is binding; and
- f. addition or reduction of work is not allowed.

While Types of Contract Based on Payment Method according to Article 51 of Presidential Decree Number 54 Year 2010 Jo Presidential Decree No. 4 of 2015 are as follows:

1. Lump Sum Contract is the Contract for Procurement of Goods / Services

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<sup>18</sup> *Ibid.*

upon completion of the entire work within a certain time limit as stipulated in the Contract, with the following criteria:

- a. the price is fixed and stable and no price adjustment possible;
  - b. all the risks are fully covered by the Supplier of Goods/Services;
  - c. the payments are based on the stage of product/output produced in accordance with the contents of the Contract;
  - d. the nature of work is oriented to the output (*output based*);
  - e. the total offering price is binding; and
  - f. addition or reduction of work is not allowed.
2. Unit Price Contract is the Contract for Procurement of Goods/Services upon completion of the entire work within the time limits that have been set, with the following provisions:
- a. definite and fixed unit price for each unit or element of work with certain technical specifications;
  - b. the volume or quantity of work is still an assumption at the time the contract is signed;
  - c. the payment is based on the result of the joint survey on job volume

that have been implemented by the Supplier of Goods/Services; and

- d. it is possible to add/reduce the jobs based on joint measurement results of the work required.

If viewed based on the fiscal year there are two types of contracts under the provisions of Article 52 of Presidential Decree Number 54 Year 2010 Jo Presidential Decree No. 4 of 2015, namely:

1. Single-Year Contract

A contract in which the implementation of the work binding the budget during the period of 1 (one) Fiscal Year

2. Multiple Year Contract

A contract which the implementation of its work for a period of more than 1 (one) Fiscal Year over the budget expense. Multiple Year Contract on the Central Government is approved by:

- a. Secretary of the Treasury for the activities which value above 10,000,000,000.00 (ten billion rupiah);
- b. Minister/Head of Institution concerned for the activities that the contract value of up to 10,000,000,000.00 (ten billion

rupiah) for the following activities: planting seeds/seedlings, greening, pioneering for sea/air services, food and medicine in hospitals, food for inmates at the Correctional Institution, procurement of excise bands, waste disposal services and procurement cleaning service.

Multiple Year Contract on local government is approved by the Regional Governor in accordance with the provisions of the legislation.

Types of Contracts Based on the Funding Sources are divided into three types, includes:<sup>19</sup>

1. Single procurement contract is contract made by 1 (one) Committing Officer with one (1) Supplier of Goods/Services to complete certain jobs within a specified time.
2. Joint procurement contract is the contract between several Committing Officers with one (1) Supplier of Goods/Services to complete the work within the specified time, according to the needs of each Committing Officer who signed the contract.
3. Framework contract is a Unit Price Contract between the Government and

the Supplier of Goods/Services that can be used by *K/L/D/I*, with the following provisions:

- a. held to guarantee the price of goods/services to be more efficient, the availability of goods/services are guaranteed and required repetitively with the volume or quantity of work cannot be determined when the contract was signed; and
- b. the payment is made by each Committing Officer/Work Unit which is based on the results of the joint assessment/measurement on the volume / quantity of work that has been carried out significantly by the Supplier of Goods / Services.

While based on the types of work, it is divided into two types of contracts, namely:<sup>20</sup>

1. Single Job Procurement Contract which is Procurement of Goods / Services Contract which only consists of 1 (one) work planning, implementation or supervision, and
2. Integrated Job Procurement Contract which is Procurement Works Construction Contract that is complex by combining the activities of

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<sup>19</sup> Article 52 of Presidential Decree No. 54 of 2010 Jo Presidential Decree No. 4 of 2015

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<sup>20</sup> *Ibid*

planning, execution and / or supervision.

#### D. CLOSING

##### 1. Conclusion

From the above discussion it can be concluded about the types of contract that are generally used by the Public Works Department of Bengkulu City in accordance with the types of work are:

- a. *Lump Sum* Contract which is Procurement of Goods / Services Contract upon completion of the entire work within a certain limitation of time as stipulated in the Contract, with the criteria of the number of prices is fixed and stable and it is not possible for price adjustment, all the risks are fully covered by the Supplier of Goods / Services, payments are based on the stages of the product / output produced in accordance with the contents of the Contract, the nature of work is oriented to the output (output based), the total offering price is binding and is not allowed any addition or reduction of work.
- b. Unit Price Contract is the Contract for Procurement of Goods / Services upon completion of the entire work within specified time limit, with fixed and

stable unit price for every unit or element of work with certain technical specifications, volume or quantity of work is still an assumption at the time the contract was signed, payments are based on the joint measurement results on the volume of work that is actually implemented by Supplier of Goods / Services and there is a possibility for addition or reduction of work based on the joint measurement results on the necessary work.

##### 2. Suggestion

A construction contract documents should be really observed and handled properly and carefully because they contain legal aspects that will determine whether the strength and the weakness of the implementation of the contract. The importance of understanding the contract as a whole and perform actions permitted in the process aims to maintain and protect the interests of related parties from the legal issues.

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